

# **RULES OF PRACTICE OF THE STATE BAR COURT**

Adopted by the Executive Committee of the State Bar Court  
pursuant to Business and Professions Code sections 6086.5 and 6086.65(c);  
Effective January 1, 2003

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of the State Bar of California

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# RULES OF PRACTICE OF THE STATE BAR COURT

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# **RULES OF PRACTICE OF THE STATE BAR COURT**

Effective January 1, 2003

Adopted by the Executive Committee of the State Bar Court pursuant to Business and Professions Code sections 6086.5 and 6086.65(c).

## **DIVISION I GENERAL PROVISIONS**

### **CHAPTER 1 TITLE, AUTHORITY AND DEFINITIONS**

#### **RULE 1100. TITLE AND CITATION**

These rules shall be known and may be cited as the Rules of Practice of the State Bar Court (hereinafter "Rules of Practice").

#### **RULE 1101. AUTHORITY FOR ADOPTION; APPLICATION**

These Rules of Practice have been adopted by the Executive Committee of the State Bar Court pursuant to Business and Professions Code sections 6086.5 and 6086.65(c) in order to facilitate and govern the conduct of proceedings within the jurisdiction of the State Bar Court. They apply to and govern all proceedings before the State Bar Court. Fair, even-handed and consistent application of these rules by all concerned is vital to the conduct of proceedings before the Court.

#### **RULE 1102. DEFINITIONS**

Unless the context otherwise requires:

- (a) The definitions stated in rule 3, Rules of Procedure for State Bar Court Proceedings (hereinafter "Rules of Procedure"), are incorporated by reference and apply to these Rules of Practice.
- (b) "Supervising Judge" is a judge of the Hearing Department appointed by the Presiding Judge in each venue to perform such duties and functions as these rules authorize or as delegated by the Presiding Judge, and includes any Assistant Supervising Judge authorized to act on behalf of the appointed Supervising Judge in his or her absence.

## **RULE 1106. ACTING PRESIDING JUDGE AND SUPERVISING JUDGES**

The Presiding Judge shall be assisted in the performance of the duties of the office as to the Hearing Department by the Supervising Judges, and shall appoint an Acting Presiding Judge to act in place of the Presiding Judge if the Presiding Judge is absent or unable to act.

## **CHAPTER 2 FORMAT, SERVICE AND FILING OF PLEADINGS**

### **RULE 1110. FORMAT OF PLEADINGS INTENDED TO BE FILED IN THE STATE BAR COURT**

- (a) **Size, pagination, etc.** All pleadings intended to be filed in the State Bar Court by any party, except exhibits, shall be typewritten or printed or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally legible to printing in type not smaller than 10 point, on opaque, unglazed white paper of standard quality not less than 13 pound weight, 8-1/2 by 11 inches in size. Only one side of the paper shall be used, and the lines on each page shall be one and one-half spaced or double spaced and numbered consecutively; provided, however, that quotations and footnotes may be single spaced. All pleadings shall be firmly bound together at the top. The use of recycled paper shall conform to the requirements of the California Rules of Court. "Pleadings," as used in this rule, do not include printed forms approved by the Executive Committee or orders generated by State Bar Court judges.
- (b) **Format of first page.** The first page of all pleadings filed by a party shall be in the following form:
- (1) In the space commencing with line 1, to the left of the center of the page, shall be set forth the office or law firm name (if any), the name(s) of the attorney(s) within the office or law firm handling the proceeding and their State Bar membership number(s), the office address (or, if none, the residence address) and telephone number of the attorney(s) for the party on whose behalf the pleading is presented, or of the party, if the party appears in propria persona. The information required by this subparagraph may be printed instead of typed on the first page of the pleading.
  - (2) The space between lines 1 and 7 to the right of the center of the page shall be left blank.
  - (3) On or below line 8, on a separate line, shall be the words "The State Bar Court"; on the next line, the particular department and/or geographical area (i.e., Hearing Department - San Francisco, Hearing Department - Los Angeles, or Review Department), and, on the following lines, to the left, the caption of the particular proceeding; and to the right thereof, the case number.

- (4) Beneath the case number described in subparagraph (3) of this rule, there shall be a title describing the nature of the particular pleading.
- (5) In proceedings pending in the Hearing Department, immediately below the title describing the nature of the pleading, each pleading shall specify (1) the date and time of the next event to which the pleading refers, if any (e.g. trial date, settlement conference date, date of hearing on motion) and (2) the trial date, if set.
- (c) **Original pleading.** At least one of all pleadings, which shall constitute the original of the pleading filed, shall bear handwritten original signatures (as distinguished from photocopied, typewritten or other duplicate signatures) in all signature blanks. Where possible, all copies of pleadings should display, by photocopy, duplicate signature or otherwise, all signatures present on the original.
- (d) **Pleading pagination.** All pages of a multiple-page pleading, including all attachments, shall be numbered consecutively.
- (e) **Number of copies filed.** Filings in the Hearing Department shall be in duplicate. Filings in the Review Department shall be in the number specified in the applicable Rule(s) of Procedure or in Division III of these Rules of Practice.
- (f) **Hearing Department pleadings in excess of 25 pages.** Pleadings intended for filing in the Hearing Department in excess of 25 pages, including all attachments, shall be two-hole punched in the top center one-half inch from the top of the page and fastened together with a metal fastener.
- (g) **Maximum length of briefs in Hearing Department.** No opening or responding brief or memorandum of points and authorities shall exceed 15 pages in length. No reply or closing briefs or memorandum of points and authorities shall exceed 10 pages in length. The page limit shall not include exhibits, declarations, attachments or a table of contents. A party may apply to the court, ex parte but with written notice of the application to other parties, at least 24 hours before the memorandum. The application shall state the reasons why the memorandum of points and authorities cannot be made within the stated limit.
- (h) **Signature of counsel or party.** Every pleading of a party represented by counsel shall be signed by at least one counsel of record in the counsel's individual name, whose address and telephone number shall be stated on the first page of the pleading. A party who is not represented by counsel shall sign the party's pleading and state the party's address and telephone number on the first page of the pleading.

Eff. January 1, 1995; revised July 1, 1997; revised January 1, 2001.

## **RULE 1111. SERVICE**

- (a) **Filing proof of service of initial pleading.** The party serving the initial pleading pursuant to rule 60 of the Rules of Procedure shall, within ten (10) days of service on opposing parties, file proof of such service.

- (b) **Subsequent pleadings.** Each party to a proceeding is responsible for service of its pleadings on all other parties. Proof of service in accordance with the Rules of Procedure shall accompany all pleadings submitted for filing.
- (c) **Interoffice mail.** When service of orders, decisions or notices is made by the Clerk through interoffice mail pursuant to rule 61(c) of the Rules of Procedure, the pleadings shall be placed in a specially marked envelope, which states that pleadings from the State Bar Court are contained therein.

## **RULE 1112. REJECTION OF PLEADINGS SUBMITTED FOR FILING**

- (a) Pleadings submitted for filing in any proceeding in the State Bar Court will be rejected by the Clerk for the following reasons:
  - (1) The pleading is not accompanied by a proof of service or is not accompanied by a proof of service that (A) bears an original signature; (B) sets forth the date upon which service was made; and (C) contains the exact title of the pleading(s) served.
  - (2) A party to the proceeding executes the party's own proof of service, unless the pleading was served by personal service.
  - (3) The pleading presented for filing does not contain an original, handwritten signature.
  - (4) The original is not accompanied by the requisite number of copies.
  - (5) The assigned case name and/or case number is missing or incorrect and the correct case name and case number is not readily identifiable by the Clerk.
  - (6) The pleading is submitted by a respondent in a proceeding in which that respondent's default has been entered, except (A) a stipulation signed by all parties, or (B) a motion for relief from default accompanied by a proposed response.
- (b) All other pleadings presented for filing in the State Bar Court will be filed by the Clerk. However, the fact that a pleading is accepted for filing does not mean that it does not contain some other defect that may be raised by an opposing party or the Court. Lack of timeliness, defects in service, failure to comply with the Rules of Procedure and other defects in pleadings should be raised by the parties. Such defect(s) may result in denial of the motion or other relief sought or in striking the pleading, whether or not the defect is raised by the opposing party.
- (c) If a party whose pleading has been rejected under this rule submits a corrected pleading for filing, the pleading shall be accompanied by a proof of service showing that the corrected pleading has been re-served on all parties and, if appropriate, by a motion for late filing.

## **RULE 1113. LAST OPPORTUNITY TO FILE MOTIONS**

All motions, other than motions in limine and motions to continue the trial, regarding the conduct of any trial shall be filed no later than fourteen calendar days before the first trial date in the matter, or the date for filing of the pretrial statement, whichever date is earlier.

Revised: January 1, 2001.

## **CHAPTER 3 COUNSEL OF RECORD**

### **RULE 1120. CHANGE OF COUNSEL OF RECORD**

Counsel of record in any proceeding before the Court may be changed by any party in the same manner as provided in Code of Civil Procedure section 284, provided that any change of the individual counsel assigned to represent the State Bar in a particular proceeding need not be by motion, but may be by notice of the name of the new deputy trial counsel, filed with the Clerk and served upon the parties.

### **RULE 1121. ADMISSION PRO HAC VICE**

Motions to appear in the State Bar Court as counsel pro hac vice shall conform to the requirements of rule 983 of the California Rules of Court, except that the filing, service and determination of such motions shall be in accordance with the general State Bar Court motion rules.

## **CHAPTER 4 TIME GUIDELINES, CONTINUANCES, AND ABATEMENT**

### **RULE 1130. TIME PENDENCY GUIDELINES**

(a) **Purpose.** These guidelines state desirable time pendency for all Court proceedings except those which are expedited. Some particular proceedings, such as those pursuant to Business and Professions Code section 6007(c), must move through the Court much faster for the protection of the public and the protection of the member who is the subject of the proceeding. By adoption of these guidelines, the Court and all parties are encouraged to move most proceedings through the Court faster than stated in these guidelines.

#### **(b) Hearing Department time guidelines.**

(1) The Hearing Department's decision or order regarding complete disposition in a proceeding should ordinarily be filed by the Clerk within eight (8) months of the filing of the initial pleading, unless a shorter time is set forth in the Rules of Procedure.

- (2) Discovery should be commenced as soon as legally permissible and completed within one hundred twenty (120) days after service of the initial pleading.
- (3) The hearing phase of any proceeding should be concluded and the matter taken under submission by the hearing judge as promptly as possible unless, for good cause, the trial is continued, post-trial briefing is ordered, or the trial is bifurcated. Trials requiring multiple days of hearing should be held on consecutive days unless, for good cause shown, the trial is continued or bifurcated.
- (4) The hearing judge should ordinarily file a decision within thirty (30) days of taking the matter under submission, but no longer than ninety (90) days. This guideline does not apply to expedited proceedings.

**(c) Review Department time guidelines.**

- (1) The reporter's transcript should ordinarily be completed and forwarded to the parties within forty-five (45) days of request for preparation of the recorder's transcript.
- (2) The Review Department's decision should ordinarily be filed within two (2) months from the submission of the cause; and in any case, not more than three (3) months from submission.

**(d) Effectuation time guidelines.** Except as provided in rule 250 of the Rules of Procedure or as required by the expedited nature of the matter, the final decision of the State Bar Court should ordinarily be effectuated by the Clerk within forty-five (45) days of filing.

**(e) Effect of time pendency guidelines.** No proceeding shall be dismissed, nor shall the discipline to be recommended or imposed be reduced nor the disposition be influenced in any manner, solely because of any failure to comply with these time guidelines.

**RULE 1131. CONTINUANCES**

**(a) General policy.** Continuances are disfavored. Dates set for all settlement conferences, hearings and oral arguments shall be firm and must be regarded by counsel as definite court appointments.

**(b) Ruling on motion for continuance.**

- (1) **Hearing Department.** Any motion for or stipulation to a continuance filed in the Hearing Department shall be ruled on by the assigned judge. In unusual or urgent circumstances, the Supervising Judge may grant a continuance if the assigned judge is unavailable.
- (2) **Review Department.** Any motion for continuance of oral argument in the Review Department shall be ruled on by the Presiding Judge.

(c) **Showing required; factors considered.** A continuance will be granted only upon an affirmative showing of good cause requiring the continuance. In general, the necessity for the continuance should have resulted from an emergency occurring after the setting of the settlement conference, hearing or oral argument date that could not have been anticipated or avoided with reasonable diligence and cannot now be properly provided for other than by the granting of a continuance. In ruling on a motion for a continuance, the Court will consider all matters relevant to a proper determination of the motion, including:

- (1) The Court's file in the case and any supporting declarations concerning the motion;
- (2) The diligence of counsel, particularly in bringing the emergency to the Court's attention and to the attention of opposing counsel at the first available opportunity and in attempting to otherwise meet the emergency;
- (3) The nature of any previous continuances, extensions of time or other delay attributable to any party;
- (4) The proximity of the settlement conference, hearing or oral argument date;
- (5) The condition of the Court's calendar and the availability of an earlier settlement conference, hearing or oral argument date if the matter is ready;
- (6) Whether the continuance may properly be avoided by substitution of attorneys or witnesses, use of depositions in lieu of oral testimony, or trailing the matter for settlement conference, hearing or oral argument;
- (7) Whether the interests of justice are best served by granting a continuance, by holding the settlement conference, hearing or oral argument of the matter, or by imposing conditions on a continuance;
- (8) The Court's time pendency guidelines (rule 1130 of these Rules of Practice);
- (9) Whether the party requesting the continuance failed to appear at any hearing or settlement conference; and
- (10) Any other fact or circumstance relevant to a fair determination of the motion.

#### **RULE 1132. ABATEMENT**

- (a) **Abated matters.** All proceedings abated by order of the Court under rule 116 of the Rules of Procedure shall, upon the filing of an order abating the proceeding, be placed in abated status.
- (b) **Requests for information.** The Court may at any time require any party to furnish information concerning an abated proceeding. The Court may also order the parties to appear at a conference concerning the abated proceeding.

**(c) Termination of abatement.**

- (1) Any party may, by motion, seek an order terminating an abatement; and the Court on its own motion may terminate an abatement after affording the parties prior notice of its intent to do so and an opportunity to respond to the notice of intent to terminate abatement.
- (2) The abatement of all proceedings involving the same member shall be terminated automatically upon the member's (A) withdrawal of a resignation with charges pending, or (B) transfer to active enrollment following prior transfer to inactive enrollment pursuant to Business and Professions Code section 6007.

**DIVISION II  
HEARING DEPARTMENT**

**CHAPTER 1  
MOTIONS**

**RULE 1200. RULINGS ON MOTIONS**

The judge to whom a proceeding has been assigned shall ordinarily rule on any motion filed in that proceeding. In unusual or urgent circumstances, if the assigned judge is unavailable, the Supervising Judge shall assign a judge to rule on the motion.

**RULE 1201. DISCOVERY REQUEST**

Discovery requests served upon an opposing party, as opposed to motions to compel discovery, are not to be filed with the Court.

Eff. January 1, 2001.

**RULE 1202. FORMAT OF DISCOVERY MOTIONS**

- (a) **Motion to Compel.** A motion to compel further responses to interrogatories, inspection demands, or admission requests and a motion to compel answers to questions propounded at a deposition or to compel production of documents or tangible things at a deposition shall be accompanied by a separate document which sets forth each interrogatory, item or category of items, request, question, or document or tangible thing to which further response, answer, or production is requested, the response given, and the factual and legal reasons for compelling it. Material shall not be incorporated by reference, except that in the separate document the moving party may incorporate identical responses and factual and legal reasons previously stated in that document. No other statements or summaries shall be required as part of this motion.

- (b) **Identification of Interrogatories, Demands, or Requests.** A motion for further responses concerning interrogatories, inspection demands, or admission requests shall identify the interrogatories, demands, or requests by set and number.
- (c) **Reference to Other Responses.** If the response to a particular interrogatory is dependent on the response given to another interrogatory, or if the reasons a further response to a particular interrogatory is deemed necessary are based on the responses to some other interrogatory, the other interrogatory and its response must be set forth.
- (d) **Reference to Other Documents.** If the pleadings, other documents in the file, or other items of discovery are relevant to the motion, the party relying on them shall summarize each relevant document.
- (e) Compliance with subparagraphs (a) through (d) of this rule is not necessary where the opposing party has failed to respond to the discovery request.

Eff. January 1, 2001.

## CHAPTER 2 CONFERENCES AND PRETRIAL

### RULE 1210. STATUS CONFERENCES

- (a) **Initial status conference.** Within forty-five (45) days of the filing of the initial pleading in a proceeding, the assigned judge shall order that a status conference be held in all proceedings. The conference may be held in court or by telephone or by other appropriate means.
- (b) **Subjects covered by initial status conference.** Parties participating shall be prepared to respond on the subjects specified in any order noticing the conference and, in addition, on the following items:
  - (1) Jurisdiction and venue;
  - (2) The substance of the parties' claims and defenses and the definition of genuinely controverted issues;
  - (3) Anticipated motions;
  - (4) Further proceedings, including setting of dates for discovery cut-off, further status conferences, settlement conferences, pretrial and trial, and compliance with rules;
  - (5) Modification of the standard pretrial procedures specified by this rule on account of the relative simplicity or complexity of the proceeding;

(6) Prospects for settlement; and

(7) Any other matters which may be conducive to the just, efficient and economical determination of the proceeding.

(c) **Additional status conferences.** Upon request of any party, or upon the assigned judge's own motion, additional status conferences may be held at any time.

#### **RULE 1211. STATUS CONFERENCE ORDERS**

Following any conference held pursuant to rule 1210, the assigned judge shall enter an order addressing, as appropriate, the items specified in rule 1210(b). Such order, unless and until modified, shall govern all further proceedings. Copies of the order shall be served on all parties who have appeared in the proceeding.

#### **RULE 1220. PRETRIAL CONFERENCES**

One or more pretrial conferences may be held in any proceeding at such time as the assigned judge may order, subject to rule 211 of the Rules of Procedure. Unless otherwise ordered by the Court, the Clerk shall serve upon all parties a written notice of the date, time, and place of the pretrial conference at least thirty (30) days prior to the conference. The conference may be held in court or by telephone or other appropriate means. The agenda for the pretrial conference shall consist of the matters covered by the Rules of Procedure and the Rules of Practice, including Division II, Chapter 2, and any other matter germane to the proceeding. Each party shall be present or represented at the pretrial conference by counsel having authority with respect to all matters on the agenda, including settlement of the proceeding.

#### **RULE 1221. PREPARATION OF PRETRIAL STATEMENTS**

Unless the Court orders that a pretrial statement need not be prepared pursuant to rule 211 of the Rules of Procedure, all counsel shall meet in person or by telephone prior to the date on which the pretrial statement is due to be filed and discuss: (a) preparation of a joint pretrial statement; (b) coordination of pretrial statements if no agreement is reached on the filing of a joint pretrial statement; and (c) settlement of the proceeding.

#### **RULE 1223. CONTENTS OF PRETRIAL STATEMENTS**

Pretrial statements shall include the following subject headings and information.

(a) **Party.** The names of the parties or party in whose behalf the statement is filed.

(b) **Substance of the proceeding.** A brief description of the substance of the charges or claims and defenses presented and of the issues to be decided.

- (c) **Undisputed facts.** A plain and concise statement of all material facts not reasonably disputable. Counsel are expected to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- (d) **Disputed issues.** A plain and concise statement of all disputed factual issues, evidentiary issues and claims of work product or privilege.
- (e) **Disposition sought.** In disciplinary proceedings, a statement as to the disposition sought if culpability is found and in other proceedings, a statement of the relief sought. No party shall be bound by presentations as to disposition sought.
- (f) **Points of law.** A concise statement of each disputed point of law with respect to the issues in the proceeding, with reference to statutes, rules and decisions relied upon. Extended legal argument is not to be included in the pretrial statement.
- (g) **Witnesses to be called.** A list of all witnesses likely to be called at trial, except for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given, any anticipated difficulty in scheduling the witness and any special needs of the witness, such as a need for an interpreter.
- (h) **Further discovery or motions.** A statement of all remaining discovery or motions.
- (i) **Stipulations.** A statement of stipulations requested or proposed for pretrial or trial purposes.
- (j) **Amendments, dismissals.** A statement of requested or proposed amendments to pleadings or dismissals of parties, charges, claims or defenses.
- (k) **Settlement discussion.** A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.
- (l) **Bifurcation, separate trial of issues.** A statement whether bifurcation or a separate trial of specific issues is feasible and desired.
- (m) **Limitation of experts.** A statement whether limitation of the number of expert witnesses is feasible and desired.
- (n) **Estimate of trial time.** An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel are expected to make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulations, expedited means of presenting testimony and exhibits, and the avoidance of cumulative proof.
- (o) **Claim of privilege or work product.** A statement indicating whether any of the matters otherwise required to be stated by this rule is claimed to be covered by the work product or other privilege. Upon such indication, such matters may be omitted subject to further order at the pretrial conference.

(p) **Failure to cooperate.** A statement as to any failure of opposing counsel to cooperate in meeting and conferring on pretrial issues. If established, such failure may constitute grounds for such orders as the Court deems proper, including, but not limited to, the exclusion of evidence and witnesses.

(q) **Miscellaneous.** Any other subjects relevant to the trial of the proceeding, or material to its just, efficient and economical determination.

Eff. January 1, 1995; revised July 1, 1997.

## **RULE 1224. TRIAL EXHIBITS**

(a) **Marking of Exhibits:** Each proposed exhibit for trial shall be premarked by the parties for identification. Unless otherwise ordered by the Court, the State Bar's exhibits shall be numbered; the opposing party's exhibits shall be lettered. The pages of each multiple page exhibit shall be paginated consecutively. Upon request, a party shall make the original or underlying document of any exhibit available for inspection and copying.

(b) **Exchange of Exhibits by parties:** At least ten days prior to the pretrial conference, the parties shall exchange copies of all exhibits to be offered, and all schedules, summaries, diagrams and charts to be used at the trial. Impeachment and rebuttal exhibits need not be included.

(c) **Proposed exhibit list:** Together with the pretrial statement, each party shall submit, as a separate document, a proposed exhibit list of all documents and other items to be offered as exhibits at trial, properly described and indexed. Records of prior discipline to be used in aggravation shall not be included in the proposed exhibit list.

The proposed exhibit list must be in a format which is approved by the Court for use as the master exhibit list at trial. An acceptable form is available from the clerk of the Court. The parties may generate their own forms but they must be in the specified format.

No exhibits shall be attached to the pretrial statement or the proposed exhibit list.

Exhibits must be handled in accordance with rule 1224(d).

(d): **Lodging and offering of exhibits at trial:**

1. **Exhibits lodged for use of court:** Each party shall lodge one set of its proposed exhibits, marked as described in rule 1224(a) and placed in binder(s) if voluminous. This set of exhibits shall not be filed, but shall be for the use of the Court. This set of exhibits shall be lodged with the pretrial statement, or at the trial, as the trial judge directs.

2. **Exhibits formally offered:** At trial, each party shall supply to the court clerk original exhibits (previously identified in the proposed exhibit list) as each is identified through stipulation of witnesses. Each exhibit must be top hole punched and, if over 30 pages, top bound. Original exhibits may not be offered in binders. These exhibits will become part of the official court record.

3. **Use of exhibits by witnesses:** The parties must have a copy of each exhibit for the use of the witness(es) separate from that offered to the court clerk. Counsel are responsible for removing (and, if applicable, recycling) this extra set of exhibits.

No exhibit may be referred to during any trial proceeding unless opposing counsel has had an opportunity to examine it. This includes newly offered impeaching or rebuttal evidence.

- (e) **Withdrawn or Denied Exhibits:** No proposed exhibit which is withdrawn or not offered will become part of the official record. Such exhibits shall be returned to the party upon request. If an exhibit's admission is denied at trial, the exhibit shall be so marked and remain part of the official court record.

- (f) **Exhibits Judicially Noticed:** If a party wishes the Court to take judicial notice of any document which is properly subject to such notice, it shall provide copies of the document together with the proposed exhibits, in accordance with the procedures set forth in this rule.

When a document is judicially noticed rather than admitted, it shall be so marked and remain part of the official court record.

- (g) **Failure to Comply:** Failure to comply with this rule without good cause may constitute grounds for such orders as the Court deems proper, including but not limited to the exclusion of exhibits from evidence.

Eff. January 1, 1995; revised July 1, 1997; revised January 1, 2001; revised January 1, 2003.

## **RULE 1225. OBJECTIONS TO PROPOSED TESTIMONY AND EXHIBITS**

Promptly after the receipt of exhibits pursuant to rule 1224 and prior to commencement of the trial, any parties proposing to object to the receipt in evidence of any proposed exhibit shall advise the opposing parties of such objection. The parties shall confer with respect to any objections in advance of the pretrial conference, if any, or of trial and attempt to resolve them. To the extent they are unable to arrive at a resolution, they shall advise the judge of such objections and make reasonable efforts to present the matter to the judge for a ruling at the pretrial conference, if any, or as ordered by the judge.

## **RULE 1226. PRETRIAL ORDERS**

The assigned judge may make such pretrial orders at or following the pretrial conference as may be appropriate, and such orders shall control the subsequent course of the proceeding.

## **RULE 1230. SETTLEMENT CONFERENCE**

At any time after a proceeding has been initiated, any party may request a settlement conference or the Court may order one on its own motion. The respondent, applicant or petitioner, whether or not represented by counsel, shall attend the conference unless excused by the Court. Counsel

appearing at the conference shall be the counsel who will try the case and shall have full authority to settle the matter at the settlement conference.

Eff. January 1, 1995; revised July 1, 1997.

#### **RULE 1231. SETTLEMENT CONFERENCE JUDGE**

Settlement conferences shall ordinarily be held before a judge other than the assigned judge. The settlement conference judge shall be appointed by the appropriate Supervising Judge or designee. If all parties so stipulate, the assigned judge may conduct the settlement conference. A party's request for a settlement conference may request a specific settlement conference judge. If the parties have agreed to jointly request a specific settlement conference judge, the request for a settlement conference shall so state.

#### **RULE 1232. NOTICE OF DESIGNATION OF SETTLEMENT JUDGE**

Unless otherwise ordered by the Court, if the settlement conference is not conducted by the assigned judge, the Clerk shall notify all parties in writing of the name of the judge designated to conduct the settlement conference no later than ten (10) days prior to the date of the settlement conference.

#### **RULE 1233. MEET AND CONFER**

The parties shall meet and confer in person or by telephone prior to the settlement conference. If the parties have developed positions concerning settlement offers, they shall be communicated orally or in writing at this time.

Eff. July 1, 1997.

Source: New.

#### **RULE 1234. SETTLEMENT CONFERENCE STATEMENTS**

Each party, or both parties jointly, shall lodge with the Court, but not file, a settlement conference statement at least 5 days before a scheduled settlement conference. The statement shall be clearly marked as such, shall be in letter form, shall indicate in the heading the date and time of the scheduled settlement conference, and shall be addressed to the settlement conference judge. Settlement conference statements may be served upon the opposing party.

Eff. July 1, 1997.

Source: New.

#### **RULE 1235. CONFIDENTIALITY OF SETTLEMENT CONFERENCES**

If a settlement conference does not result in a settlement, no reference shall be made nor consideration given in any subsequent aspect of any proceeding to the content of settlement discussions or written statements made in connection with the settlement conference or the parties' meeting and conferring process leading up to the settlement conference.

Eff. January 1, 1995; renumbered July 1, 1997.

Source: Former Rule 1233.

## **RULE 1240. NOTICE OF CONFERENCES**

The Clerk shall serve upon all parties a written notice of the date, time, and place of any conference pursuant to this chapter at least ten (10) days prior to the conference unless otherwise ordered by the Court.

## **CHAPTER 3 PRESENTATION OF EVIDENCE**

### **RULE 1250. ORDER OF PROOF IN DISCIPLINARY PROCEEDINGS**

In disciplinary proceedings, the parties shall present evidence as to culpability prior to presenting evidence as to aggravating or mitigating circumstances, except as ordered by the Court. The judge shall not consider evidence as to aggravating or mitigating factors, including a respondent's prior disciplinary record, in determining culpability. However, evidence of a respondent's other acts of misconduct, including his or her disciplinary record, may be received in the culpability phase of a hearing if this evidence is admissible pursuant to Evidence Code section 1101 (b).

Revised: January 1, 2001.

### **RULE 1251. ORDER OF PROOF IN OTHER PROCEEDINGS**

In all proceedings other than disciplinary proceedings, the party initiating the proceeding, or the State Bar, if the proceeding was initiated by the Court, shall present evidence first. However, the Court, in its discretion, may regulate the order of proof.

Revised: January 1, 2001.

## **CHAPTER 4 RECORD OF PRIOR DISCIPLINE IN DISCIPLINARY PROCEEDING**

### **RULE 1260. NO INTRODUCTION INTO EVIDENCE UNTIL AFTER FINDING OF CULPABILITY**

The admissible record of another formal disciplinary proceeding, as defined in rule 216 of the Rules of Procedure, when applying only to the issue of appropriate discipline, shall not be introduced into evidence unless and until the judge finds culpability.

**CHAPTER 5  
DECISION**

**RULE 1270. FORM AND CONTENT; TIME FOR FILING**

The assigned judge shall prepare and file with the Clerk a written decision in the form and with the content required by the applicable rule in the Rules of Procedure, within the Court's time pendency guideline rule. The judge shall not assign the duty of preparation of the decision to any party or party's counsel.

**DIVISION III  
REVIEW DEPARTMENT**

**CHAPTER 1  
GENERAL RULES**

**RULE 1300. NUMBER OF COPIES OF FILED DOCUMENTS**

- (a) Any party filing a request for review or any brief or pleading in connection with any matters before the Review Department in bank shall file an original and four copies of such document.
- (b) Any party filing a pleading relating to a motion to be determined by the Presiding Judge pursuant to these Rules of Practice or the Rules of Procedure shall file an original and two copies.

Revised January 1, 2001.

**RULE 1301. LATE FILINGS, EXTENSIONS, CONTINUANCES AND PREFERENCE**

Upon motion of a party and for good cause shown, the Presiding Judge may grant permission for late filings, including late filing of a request for review, for extensions of time for filing briefs, for continuance of oral argument or for preference on the calendar.

**RULE 1302. WITHDRAWAL OF REQUEST FOR REVIEW**

- (a) At any time before service of notice of the time and place of oral argument, a party who requested review may withdraw the request for review in whole or in part by filing and serving notice of such withdrawal. The party shall specify whether the requested withdrawal is in whole or in part and, if in part, shall specify with particularity that portion of the request for review for which withdrawal is sought.
- (b) After the Clerk has served notice of the time and place of oral argument, a request for review may be withdrawn in whole or in part only by order of the Presiding Judge upon written motion by the party who sought review.

- (c) A withdrawal of request for review in its entirety shall nullify the request for review and leave standing the decision of the Hearing Department as the final decision of the State Bar Court.

## **CHAPTER 2 RECORD AND TRANSCRIPT ON REVIEW**

### **RULE 1310. RECORD ON REVIEW**

Upon the filing of a timely request for review, the Clerk shall prepare the record on review. The record on review shall consist of all pleadings filed in the formal proceeding under review; the decision of the judge of the Hearing Department and all other orders relating to the matter under review; all exhibits offered or received in evidence and all tape recordings and transcripts of testimony relating to the matter under review.

### **RULE 1311. PROOF OF TRANSCRIPT ORDER**

- (a) All requests for review filed pursuant to rule 301 of the Rules of Procedure must have attached thereto, or be accompanied by:

(1) In the case of requests for review filed by the Office of the Chief Trial Counsel or any division thereof, copies of the completed transcript order form signed by the deputy trial counsel.

(2) In the case of requests for review filed by any other party, either:

(A) Copies of the completed transcript order form and of a check, together with a declaration under penalty of perjury stating that the check is in the amount requested by the Clerk for the transcript deposit and that the originals of the transcript order form and check have been delivered to the Clerk; or

(B) A motion for a reasonable extension of time to pay the transcript deposit, supported by one or more declarations under penalty of perjury stating: (i) the amount of the transcript deposit requested by the Clerk; (ii) specific facts regarding the party's assets, debts, income, expenses, and possible sources of credit, establishing the party's present inability to pay, and (iii) specific facts establishing that the requested extension of time will be sufficient to permit the party to obtain the necessary funds.

- (b) Requests for review which do not comply with this requirement will not be filed by the Clerk, provided, however, that a request for review which is timely served and submitted for filing, but which is rejected by the Clerk pursuant to this rule, shall be filed, notwithstanding the applicable time limit in rule 301(a)(i) or 301(b) of the Rules of Procedure, if it is re-served and resubmitted for filing with the proper attachments within ten (10) days after service of the

Clerk's rejection notice. The Clerk shall refer to this rule in all rejection notices mandated by this rule.

- (c) The requirement of a transcript and of payment therefor by the party requesting review will not be waived except in the case of matters designated for summary review pursuant to rule 308 of the Rules of Procedure.

### **CHAPTER 3 BRIEFS**

#### **RULE 1320. FORM OF BRIEFS**

Each point in a brief shall appear separately under an appropriate heading, with subheadings if desired. The statement of any matter in the record shall be supported by appropriate reference to the record, including the name of any document referred to and the specific page thereof. Every brief in excess of ten (10) pages shall be prefaced by a topical index of its contents and a table of authorities, separately listing cases, statutes, court rules, constitutional provisions and other authorities.

#### **RULE 1321. BRIEF OF AMICUS CURIAE**

A brief of amicus curiae may be filed by order of the Presiding Judge and subject to conditions which may be prescribed.

### **CHAPTER 4 ARGUMENT AND SUBMISSION**

#### **RULE 1330. ORAL ARGUMENT**

In a matter before the Review Department, each side shall have a maximum of twenty (20) minutes for oral argument except as the Presiding Judge may otherwise direct. During the time allotted each side, judges of the department may ask questions of counsel for that party. Argument shall be confined to the record of State Bar proceedings in the matter under review and applicable legal authorities. Counsel for the party seeking review shall commence the argument and may reserve any unused allotted time for rebuttal. In the event more than one party sought review or the matter was set for hearing on the Review Department's own motion, the deputy trial counsel shall commence the argument. Upon motion filed and served at least ten (10) days before oral argument and for good cause shown, the Presiding Judge may extend the time for oral argument.

**RULE 1331. LOCATION OF ORAL ARGUMENT; ARGUMENT BY CONFERENCE TELEPHONE**

The Review Department will regularly hear oral arguments in San Francisco and Los Angeles. Ordinarily oral argument shall be scheduled in the venue in which the trial took place. By written request filed with the Clerk at least ten (10) days prior to the date of oral argument, counsel entitled to present oral argument may request to do so by a conference telephone system operated by the State Bar Court. However, the Review Department may require counsel to appear in person.

**RULE 1332. EXPEDITED ORAL ARGUMENT IN PROCEEDINGS UNDERLYING BUSINESS AND PROFESSIONS CODE § 6007(c) ENROLLMENTS**

Any respondent having timely sought review of a decision by the Hearing Department on the matter underlying an order for inactive enrollment under Business and Professions Code section 6007(c) may move that the review of that underlying matter be set for oral argument on the next available calendar regardless of location. Such motion shall be filed and served no later than the last day for filing briefs.

**RULE 1333. TIME OF SUBMISSION**

- (a) A proceeding pending in the Review Department is submitted when that Department has heard oral argument or has approved a waiver of oral argument, or when the time has passed for filing all briefs and papers, including any supplemental post-argument briefs permitted by that Department, whichever is latest.
- (b) Submission may be vacated only by an order stating the reasons therefor. The order shall provide for resubmission of the proceeding.

**RULE 1340. CRITERIA FOR PUBLICATION**

- (a) For purposes of this chapter, “opinion” means an opinion of the Review Department, and “rule” includes, but is not limited to, any doctrine of common law and any interpretation or application to facts of a statute, Rule of Professional Conduct, California Rule of Court, or other codified rule.
- (b) By majority vote, the Review Department may designate for publication an opinion which:
  - (1) Establishes a new rule, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule;
  - (2) Resolves or creates an apparent conflict in the law;
  - (3) Involves a legal issue of continuing interest to the public generally and/or to members of the State Bar, or one which is likely to recur;

(4) Makes a significant contribution to legal literature by collecting and analyzing the existing caselaw on a particular point or by reviewing and interpreting a statute or rule; or

(5) Makes a significant contribution to the body of disciplinary caselaw by discussing the appropriate degree of discipline based on a set of facts and circumstances materially different from those stated in published opinions.

Eff. July 1, 1997.

Source: New.

## **RULE 1341. PARTIAL PUBLICATION**

Where only part of an opinion meets the requirements of rule 1340, the Review Department may, by majority vote, designate for publication only that part of the opinion which satisfies the requirements of rule 1340, including any additional material, factual or legal, that aids in the interpretation of the published part of the opinion.

Eff. July 1, 1997.

Source: New.

## **Rule 1342. REQUIREMENTS FOR PUBLICATION OF CERTAIN OPINIONS**

Opinions in non-public matters shall not be designated for publication pursuant to rule 1340 or for partial publication pursuant to rule 1341 unless all parties to the proceeding who have a right to confidentiality have consented to publication.

Eff. July 1, 1997.

Source: New.

## **RULE 1343. REQUESTING PUBLICATION OR NON-PUBLICATION**

(a) Any person may request publication or partial publication of an opinion not designated for publication, or publication in full of an opinion designated for partial publication. The request shall be made promptly by letter stating concisely why the opinion meets one or more of the standards set forth in rule 1340. The letter shall be addressed to the Presiding Judge, and shall be accompanied by proof of service on all parties to the proceeding in which the opinion meets one or more of the standards set forth in rule 1340. Any party to the proceeding may respond to the letter within ten (10) days of service, by means of a letter to the Presiding Judge accompanied by proof of service on all parties to the proceeding and on the person requesting publication. The decision regarding the request shall be made by majority vote of the Review Department.

(b) Within 20 days after the filing of an opinion designated for publication, any person may request by letter that the opinion not be published, that it be published only in part, or that it be published in a form which does not identify any party other than the State Bar. The request shall state the nature of the person's interest and shall state concisely reasons why the change requested should be made. The request shall not exceed 10 pages and shall be accompanied by proof of service to each party to the action or proceeding.

(c) Response. Any person may, within 10 days after receipt by the Review Department of a request for depublication, submit a response, either joining in the request or stating concisely reasons why the opinion should remain published. A response shall state the nature of the person's request. Any response shall not exceed 10 pages and shall be accompanied by proof of service to each party to the action or proceeding, and person requesting depublication.

Eff. July 1, 1997; revised January 1, 2001.  
Source: New.

